86-62

No. 85_____

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1985

J. JEROME PREVATTE, INDIVIDUALLY
AND WACO FINANCIAL, INC.

PLAINTIFF/APPELLANTS

v.

SECURITIES AND EXCHANGE COMMISSION,
ITS AGENTS AND EMPLOYEES; ET AL

DEFENDANT/APPELLEES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

J. Jerome Prevatte
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(pro se)
835 W. Cedar St.
Kalamazoo, Michigan 49007

4PP

QUESTIONS PRESENTED

1. Is there a right to be free from Securities and Exchange Commission bad faith persecution and a right to sue SEC agents under 42 U.S.C. 1983 for administrative proceedings brought in bad faith by the SEC? Is a pro se litigant inlagh when dealing with the Securities and Exchange Commission or has that agency become a separate untouchable governmental branch?

2. May res judicata be the basis for dismissal where it was not raised as an affirmative defense. Where there was no means to defend against such a defense.

3. Are administrative proceedings or Proceedings arising out of administrative proceedings subject to res judicata, where there have been no proceedings or trial on the merits?

a. The issues of fact being different.

b. The Plaintiffs and Defendants being different.

c. There having been no trial on the merits. Where in fact issues found to be res judicata were not even a matter in previous action.

4. Does the District Court have jurisdiction over improper conduct or acts of those lawyers practicing before it.

5. May the inferior Court properly make a determination that the intent of the parties cause of action is, other than that actually intended or brought by the parties. That the gravaman of the action is other than that brought or intended, then using such incorrect supposition as cause for dismissal rather than having a trial on facts, before the proper (a jury) trier of facts?

6. May a judge set on a pro se litigant

case which involves allegations attorney malfeasance when that judge has a pro se malpractice action pending against him.

PARTIES-INVOLVED

PLAINTIFF/APPELLANTS

1. Petitioners, J. Jerome Prevatte is the President, Waco Financial a small securities dealer operating a full service securities brokerage firm, also offering discount commissions. Petitioners operated out of Suite No. 1 ISB Bank Building in Kalamazoo, Michigan. Waco at this time is not operating, at the time of the events which are the gravaman of this action employed in addition to Prevatte five to seven people.

2. WACO was a member of the NASD after having started business as a SECO firm. Numerous acetones were brought against Prevatte and WACO by the NASD and SEC. The basis of these actions were Petitioners contend motivated by malice. In no

case has the SEC ever found in any hearings that Prevatte or WACO violated any Securities rules, regulations or laws. In no case was the SEC able to produce a harmed client of WACO or Prevatte, as a witness. Prevatte has never been given an opportunity for a fair hearing in either the administrative process or the Courts. Petitioners have had no access to a fair forum with a hearing on the merits .

DEFENDANT/APPELLEES

1. The Securities and Exchange Commission is an agency of the United States Government, charged with the supervision of the securities industry by SEC Act of 1934, and the Maloney Act and the general supervision of the conduct within the securities industry. The SEC has a mandate to regulate the industry fairly.

2. John Shad, Chairman of the SEC.

3. William Goldsbery, agent and Director Chicago office.

4. Frank Laush, agent and attorney for SEC, Detroit office.

5. Mary Weiss, agent and attorney for SEC, Chicago office.

6. William Gaynor, agent and attorney for SEC Chicago office

7. Frank Rothing, former officer, Executive Vice President, Ast. Sec. (CBOE) Defunct, Front Street Securities, 110 Wall St. New York, New York, Chicago office, 141 W. Jackson Blvd. Chicago, Ill. Employee Ident. No. 36-2787473, improper trading practices caused firm to close and it may have gone bankrupt; now an accountant with SEC.

8. John Kuhn, agent and examiner for SEC, Detroit office, did Waco examinations.

9. David Brown, agent and examiner for

SEC, Chicago office sate day after day in WACO offices doing nothing or bothering WACO personnel. Did absolutely no useful function merely took NASD figures with no confirmation . If not enough time was devoted to giving him attention he became angry.

10 . Kenneth V . Miller, unassociated person, counsel for Prevatte and WACO.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES INVOLVED ii

TABLE OF CONTENTS iv

TABLE OF STATUTES AND

AUTHORITIES v

JURISDICTIONAL STATEMENT ..... 4.

STATEMENT OF FACT ..... 11.

REASON FOR GRANTING THE WRIT ..... 24.

CONCLUSION ..... 24.

OPINION BELOW ..... Appendix A

NOTICE OF APPEAL .....Appendix B

TABLE OF STATUTES AND AUTHORITIES

Berger v. United States, 295 U.S. 78, 55 S.Ct. 629, 79 .....11.

Blankenship v. Sec. of H.E.W., No. 76-2342, (CA 6 78) ..... 13.

Blonder-Tongue Labortories v. University of Ill., 91 S.Ct. 1434, 402 U.S. 313 ..... 15. 16.

Busche v. Burkee, 649 F.2d 509, 518 (7 Cir 1981) cert den 102 S Ct 396 ....3. 10. 12.

Cannon v. U.S. Acoustics Corp., 398 F.Supp. 209, (DC Ill. 1975) rev in part afd in part on other grounds, 532 F.2d 1118..... 21.

Clipper Express v. Rocky Mountain Motor Traffic Bureau, 690 F.2d 1240, 1250, (CA9 1982) ..... 19.
Concordia v. Bende Kovis,

693 F.2d 1073 ..... 19.
Exparte Young, 209 U.S. 123, 52 L.Ed 714, 28 S.Ct. 441, 13 LRA NS 932 ..... 20.

Herman and Maclean v. Huddleston, 74 L. Ed.2d 548, 103 S Ct 683 (US 1983) ..... 20.

Hearn v. Enslen, A 83-300-250 (Cir Ct Kal. Mich) ..... 24.

International Shoe Co. v. Washington, 326 U.S. 2 319 ..... 11.

Jones v .Securities and Exchange Commission, 298 U.S. 1, 56 S Ct 654 ..... 13.

Loudermill v . Cleveland Board of Education, 721 F.2d 550, (6th Cir 83) ..... 14. 17.

Mark v. Graff, 521 F.2d 1376, (CA9 1975) ..... 13 20.

Montana v. United States, 99 S.Ct 970, 440 U.S. 147 ..... 18.

Musicus v. Westinghouse Elec. Co., 621 F.2d 742, (CA Fla. 1980) ..... 21.

O'Connor v. G & R Packing Co., 74 AD.2d 39, 426 NYS.2d 557 ..... 19.

Powers v. Lightner, 84-2312 (1-16-86) ..... 15.

Rachal v. Hill, 435 F.2d 59, 1970 ..... 17.

Rospigliosi v. Colgher, 46 SO.2d 170, cert den 71 S Ct 81 ..... 17.

Securities and Exchange Commission v. WACO Financial, Inc., 751 F.2d 831 (6th Cir 1985) ..... 5. 9.

Shaw v. Garrison, 467 F.2d 113 (CA 5 72) ..... 15.

Smith v. Wade, 461 U.S. 31, 75
L.Ed.2d 632, 103 S.Ct. 1625 ..... 13.

TSC Industries v. Northway Inc.,
426 U.S. 438, 96 S Ct 2126,(1956) .. 17.

Tower v. Glover, 104 S Ct
2820 (1984) ..... 15.

United States v. Kilpatrick,
570 F. Supp 505,
(DC Col 1983), L.Ed 1314 ..... 11.

Whitlow v Hodges, 539 F.2d 582
(CA Ky 1976) ..... 16.

Whitney v. Seibel, 676 F.2d 245,
68 ALR F 848, cert den 103 S.Ct.
245, (CA7 1982) ..... 16 19 .

Wood v. Covington County Bank,
537 F.2d 804, (CA Ala 1976) ..... 21.

World-Wide V. W. Corp. v. Woodson,
44 U.S. 286, 297 (1980) ..... 11.

Yelton v. Plantz, 77 N.E.2d 895
226 Ind. 155 ..... 24.

AUTHORITIES

Title 28 U.S.C. Sec. 1254(1), 2072 ... 4.

Title 15 U.S.C. Sec. 78o(b)(7) ..... 4.

Title 28 U.S.C. Sec. 2671 & 2680(a) . 18.

Title 42 U.S.C Sec. 1981-1985 ..... 18.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1985

No. 85_____

J. JEROME PREVATTE, INDIVIDUALLY
AND WACO FINANCIAL, INC.

PLAINTIFF/APPELLANTS

v.

SECURITIES AND EXCHANGE COMMISSION

ITS AGENTS AND EMPLOYEES;
JOHN SHAD, WILLIAM D. GOLDSBURY, MARY WEISS, WILLIAM GAYNOR, FRANK ROTHING, MIKE LAUSH, JOHN KUHN, DAVID BROWN, AND UNASSOCIATED INDIVIDUAL, KENNETH V. MILLER

DEFENDANT/APPELLEES

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS
FOR THE SIXTH CIRCUIT

Petitioners, J. Jerome Prevatte and Waco Financial, Inc. respectfully pray that a writ of certiorari issue to the Sixth Circuit Court of Appeals with instructions for a trial of the facts on the merits of the issues presented, (alleged). Petitioners contend that they can not obtain a fair forum in the Sixth Circuit due, inter alia to extensive improper ex parte acts on the part of SEC agent Weiss. Such acts have acted to preclude any proper hearing before the District Court, Western District of MI. Neither have the issues alleged in Plaintiffs' Complaint been before an impartial trier of the facts as the Opinion below would have one believe. Amendment V of the Constitution of the United States "..nor shall a person ... be deprived of life, liberty, or property, without due process of law...".

OPINION BELOW

Opinion of District Court and the 6th Circuit, is based on three assumptions which under settled law are not existing here:

a. Res Judicata

b. Absolute Immunity

c. No RICO claim

d . Inference of mislabeled action Appeal from a dismissal filed May 20, 1985 WD Mich . to the Sixth Circuit, order of the Dististrict Court affirmed, April 2, 1985 . At Appendix A, infra, pp A1 The order of the 6th Circuit Court Of Appeals shows a lack of any substantive imput or finding of fact. see Busche v. Burkee, Supra. Plaintiffs/Appellants submit that settled law does not concur with those findings.

JURISDICTION

The jurisdiction of the Court is invoked under Title 28 U.S.C. $$ 1254(1), and 2072 (maintaining the right to trial by jury).

Facts 1. This litigants have never has been found in any hearing before the Securities and Exchange Commission to have violated any securities law or regulation. Through a technical means and false representations, they have been deprived of a license, a lively hood and a business, and improperly so.

The allegations Plaintiffs/Appellants' complaint was that Prevatte and WACO having been disciplined by the National Asso-ociation of Securities Dealers, Inc., were precluded from dealing in securities under 15 U.S.C. Sec. 78o(b)(7). That the results were achieved by malicious prosecution conducted inter alia through a con-

spiracy. That the conspiracy was carried on by the named Defendants/Appellees . There was no plenary trial on those issues or the allegations in Plaintiffs/Appellants' com-plaint. The basis of the findings in Securities and Exchange Commission v. WACO Financial, Inc., 751 F.2d 831 (6th Cir 1985), was failure to exhaust administrative remedies.

2. Prevatte and Waco Financial contend that the basis underlying the administrative and the court action was false, misleading and included material undenied perjuris testimony. Captive individuals, from the NASD, and/or SEC examiners were the only sources of testimony.

3. After protracted litigation through the administrative process where the PLAINTIFF/ APPELLANTS were denied every conceivable due process and constitutional

right, redress was sought through the courts. Only after failing to obtain redress through the administrative process did Prevatte and WACO seek to achieve an equitable solution through the Courts. In the courts the SEC and the NASD have continued to give obvious false testimony, make false affidavits, make substantive and material false changes to sworn deposed testimony.

4. The SEC has also made material misrepresentations which are difficult for those not associated with the securities industry to understand. Within the securities industry accounts receivable and accounts payable, are referred to as **(FAILS)**. the such industry nomenclature for receivables and payables, was used without explanation. As stated by the SEC "Waco was failing to deliver, receive

(large dollar amount $250,000.00 to $300,000.00), of customer securities. Normal Broker/Dealer activity and industry (trade) terminology.

4. The SEC brought a complaint for injunctive relief which was granted. No request for any relief was ever requested by the SEC. In other actions such relief did not relate to the matter of the allegations of the complaint here, but rather, Court findings while doing so were not on the merits, rather, were founded in the failure to exhaust administrative remedies. The action here is based on the known improper administrative acts by SEC agents.

5. In 1976 agent Mike Laush attempted to have Prevatte sign a letter which would have deprived Prevatte numerious of Constitutional and due rights. After careful

consideration and consultation with a U.M. Law Professor James Flagen, Mr. Prevatte refused to sigh the Laush SEC letter. Upon being told by Mr. Prevatte that he would not sign that letter, agent Laush became very angry, stating, "if you don't sign that letter I'll have your ass".

6. The basis upon which agent Laush requested that Prevatte sign his letter was reexamined by the Chicago office, agent Smerstick. There was no cause for such a letter or any other action.

7. Waco and Prevatte subsequently joined the NASD after Prevatte passed the principal's examination and the financial principal's exam-ination. Prevatte failed to pass the latter the first time he took it.

8. Waco and Prevatte were expelled from the NASD, Prevatte alleges as a result of

a conspiracy, due to a personal vendetta by the NASD and SEC.

Violations if any, alleged by the NASD were only technical in nature, even if true, which Prevatte contests such violations should not have resulted in the sanctions imposed.

9. After expulsion from the NASD Prevatte contended that the refilling of SECO forms which were on file with the SEC as a SECO Broker/ Dealer were still effective. The SEC insisted on new forms being filed. WACO sent the annual fee to the SEC for operation as a SECO B/D the fee was were returned. The forms on file with the SEC were exactly the same as new forms with no changes. 9. It appears the Ms. Weiss of SEC in the sole case relied upon by the 6th Circuit Court, Securities and Exchange Commission v. WACO Financial, Inc., 751

F.2d 831 (6th Cir 1985), may have remained in Cincinnati after oral arguments in that case, 83-1309 on appeal from the WD Mich., to ghost the opinion therein. In effect the decision here was based on failure to exhaust administrative remedies, with no conclusions of the merits. The substantive nature of the issues presented to that Court were not addressed. see Busche v. Burkee, id This case was on appealed from the Western District of Mich., where agent Weiss had conducted undenied ex parte activities with that Court during the week just prior to the hearing in that Case that case now on appeal. The statement of the Gibson clerk, J. Bergman, " I had occasion to see her during that week". This Court in matters of Petitioner request for a fair forum in matters directly related to this undenied ex parte act

chose not to address the matter. Such acts were properly addressed in United States v. Kilpatrick, 570 F. Supp. 505, (DC Col 1983), the Court called such acts biz-arre, quoted Berger v. United States, 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed 1314. Ex parte acts appear to be a way of life at the WD Mich Court, just last week Judge Enslen made a statement relating to such undisclosed acts of about a year earlier in a still pending case once again government agents participants.

STATEMENT

Fundamental fairness is the touchstone of due process. International Shoe Co. v. Washington, 326 U S 319, while due process places a degree of predictability to the legal system. World-Wide V. W. Corp. v. Woodson, 44 U.S. 286, 297 (1980). There is no evidence of fact finding in the dec

ision of the District Court. A reading of that opinion there will show a determination to dispense with the cause of action without the need to address the substantive issues of Petitioners complaint . There must be evidence of fact finding by Court Busche v. Burkee, 649 F.2d 509, 518 (7 Cir 1981) cert den 102 S Ct 396. Question No. 1. Is there a right to be free from SEC bad faith regulation. Is there a right to sue under 42 U.S.C. 1983 for actions brought in bad faith? The acts of the SEC in matters of Prevatte and WACO have been such as to give rise to action for conspiracy, 1983 claims and acts for damages under RICO. The issue controlling in this action is a 1983 claim with a Conspiracy to conduct malicious regulation under the color of law. With the specific intent to deprive Prevatte and WACO

of constitutionally guaranteed rights . Such acts constituted intentional misconduct on the part of the SEC agents. Blankenship v. Sec. of H.E.W., No. 76-2342, (CA 6 78). also see Jones v. Securities and Exchange Commission, 298 U.S. 1, 56 S Ct 654, 80 L Ed 1015. Section 1983 provides a remedy for all violations of rights secured by the Constitution, no conclusions have been made on such matters as are the gravaman of the action in Plaintiffs' allegations . The acts of the SEC and its agents were motivated by evil intentions, with reckless and callous indifference to federally protected right, see Smith v. Wade, 461 U.S. 31, 75 L.Ed.2d 632, 103 S.Ct. 1625. in the regulation of Prevatte and WACO. In Mark v. Graff, 521 F.2d 1376 (CA9 75) it was held that immunity is no more than qualified . Among the four

standards set out here the important one is, "are actions within bounds of immunity, -which is a question for a trier of facts." This matter Plaintiffs/Appellants submit are for a jury determination and should not have been dismissed . Plaintiffs commenced this action alleging inter alia a 1983 claims for malicious regulation.

The SEC also it is alleged conspired with the NASD in the administrative process to deprive Prevatte and WACO of Fifth, Sixth and fourteenth amendment rights. All matters before the Courts have been matters of or arising out of administrative procedures which Prevatte and WACO submit are not subject to res judicata. Loudermill v. Cleveland Board of Education, 721 F.2d 550, (6th Cir 83). Nor is there immunity for knowingly acting outside of the regu-

latory mandate to deprive persons of 1983 rights. Powers v. Lightner, 84-2312 (1-16-86) qualified immunity only available, agents should have known that the challanged action violated Constitutional rights. Tower v. Glover, 104 S Ct 2820 (1984) no immunity for interntional misconcuct. The SEC acted in bad faith in its prosecution of Prevatte and WACO and continued such bad faith prosecution while knowing that WACO was in compliance with the securities laws, (agent Gayno to SEC by phone on or about March 6, 1981, "they appear to be in compli-ance") yet SEC continued its harassment. There is a federal right to be free from such bad faith prosecution, Shaw v. Garrison, 467 F.2d 113 (CA 5 72). Question No. 2. Is res judicata required as an affirmative defense as in Blonder-Tongue Labortories v. Uni-

versity of Ill., 91 S.Ct. 1434, 402 U.S. 313. Here the Supreme Court held that to be effective as a defense, res judicata must be pleaded as an affirmative defense so that it could be defended against. Prevatte and WACO had no such opportunity in the District Court. SEC filed this defense in its motion to dismiss, and late, while never having filed any other affirmative defense. Whitlow v Hodges, 539 F.2d 582 (CA Ky 1976), Lower Courts are bound by Decisions of the United Supreme Court until such time as that Court informs them that they are not. Prevatte and WACO had no opportunity to defend against res judicata as is required under Blonder-Tongue Laboratories, id The lower Court based its dismissal on unrelated and issues not germane to the issue of those brought here. The issues herein addressed arise out of

admin-istrative actions which Prevatte and WACO contend are not subject to res judicata. Rachal v. Hill, 435 F.2d 59, 1970. also, Rospigliosi v. Colgher, 46 SO.2d 170 cert den 71 S Ct 81. Reviewed ad,omostrative adjudication has no claim preclusion effect in subsequent section 1983 action, Loudermill v. Cleveland Bd. of Education, 721 F.2d 550 (6th Cir 1983). There is no evidence nor did SEC advance any that a 1983 or conspiracy claims was ever tried on the merits. Materiality of the allegations of Prevatte and WACO, is a factual issue and a question for a jury, TSC Industries v. Northway Inc., 426 U.S. 438, 96 S Ct 2126, 48 L Ed.2d 757 (1956). Question No. 3. May res judicata be the proper basis for a dismissal when none of the basis or standards of res judicata exist:

a. issues different and could not have been raised.

b. parties different and could not have been joined.

c. no evidence of adjudication on the merits.

Under the Federal Tort Claims Act, right of action comes by way of 28 USCA Sec. 2671 and Sec. 2680(a), as well as 42 U.S. C. Sec 1981 through 1985. The SEC made its motion to dismiss on the an improper basis since the federal rights extend to the actions herein addressed and the SEC has made not even general denials of the allegations of the complaint. Neither has the SEC proven that the issues are the same, the parties are the same, or that the issues have had a full and fair trial on the merits. see Montana v. United States, 99 S.Ct. 970, 440 U.S. 147. A

party may not be estopped to raise issues that had less than full and fair opportunity to be litigated in prior proceedings, Whitney v. Seibel, 676 F.2d 245, 68 ALR F 848, cert den 103 S.Ct. 245, (CA7 1982). Also in res judicata the facts must be viewed in light most favorable to the non moving party, Clipper Express v. Rocky Mountain Motor Traffic Bureau, 690 F.2d 1240, 1250, (CA9 1982) More than records are needed to satisfy minimum requirement for the defense of res judicata, Concordia v. Bende Kovis, 693 F.2d 1073. Judgment on any grounds not involving merits not basis for res judicata, O'Connor v. G & R Packing Co., 74 AD.2d 39, 426 NYS.2d 557. Question No. 4. Is there Immunity for knowingly committed acts outside of the regulatory framework or guidelines ? Prevatte and WACO submit that there is no

such thing as absolute immunity . Officials acting in violation of the Federal Constitution are stripped of official or representative character, Exparte Young, 209 U.S. 123, 52 L.Ed 714, 28 S.Ct. 441, 13 LRA NS 932. see also Smith v. Wade, 461 U.S. 31, 75 L.Ed2d 632, 103 S.Ct. 1625. and Mark v. Graff, 521 F.2d 1376, (CA9 1975) it was found, government agents were entitled to no more than qualified immunity . The Plaintiff/Appellants herein were defrauded by the NASD and the SEC, they allege inter alia conspiracy with scienter under such conditions they should be able to take their case to a jury and recover if they can prove such fraud, see Herman and Maclean v. Huddleston, 74 L. Ed.2d 548, 103 S Ct 683 (US 1983). Question No. 5. Does the District Court have jurisdiction

over improper conduct or acts of lawyers practicing before it. It has been held that a District Court not only has the duty, but is obliged to do so, Wood v. Covington County Bank, 537 F.2d 804, (CA Ala 1976). District Court obliged to take measures against breaches of attorney client privileges or other duties connected with proceedings before it, Musicus v. Westinghouse Elec. Co., 621 F.2d 742, (CA Fla. 1980). The District Court has jurisdiction to enforce the American Bar Association's Code of Professional responsibility, Cannon v. U S Acoustics Corp 398 F.Supp. 209,(DC Ill. 1975) rev in part afd in part on other grounds, 532 F.2d 1118. The Federal Courts have the duty to inforce compliance with the 6th Amendment to the United States Constitution. Due to SEC Rule 2e the such effective assistance of

counsel was denied Prevatte and WACO in the actions before the administrative panels and in the Courts with respect to the counsel of Defendant Kenneth V. Miller. The basis for dismissal of the complaint against Kenneth V. Miller Plaintiffs/Appellants submit should not stand . Question No. 6. May the Lower Court properly make a valid determination as to the intent of the parties for their cause of action? A supposition for dismissal of the complaint with respect to Defendant Miller was that Prevatte and WACO were bringing a malpractice complaint under the cover of a conspiracy. Such was not the case. Prevatte and WACO content in the complaint that their counsel, defendant Miller with scienter withheld counsel in conspiracy with the SEC . Such actions rise to a level far beyond any malprac-

tice. The allegations of the complaint should be taken by the court as presented, unless there is clear evidence to the contrary Prevatte and WACO submit.

Question No. 7. While making a determination in a matter of a attorney, no doubt a friend, a member of the same bar, and in a small town. The District Court Judge at the same time had a ongoing malpractice case against him for omissions (failure to instruct the jury properly or to object to prosecutors statements with respect to clients failure to testify in his own behalf) while in private practice. Prevatte and WACO contend that there can not be a clear unbiased decision on the matter of a pro se litigant while a judge has a similar action pending against himself. Prevatte and WACO submit, that Judge Enslen should not have sat on the instant case

for the reason of the pro se malpractice case against him Hearn v. Enslen, A 83-300-250 NM Curcuit Ct. MI.

REASON FOR GRANTING WRIT OF CERTIORARI It is important that due process in administrative procedures be followed so as to assure that there is not the necessity of those subjected to the process to turn the Courts for proper redress. The administrative process is the only time that many citizens will ever come into contact with the legal process. It is also the purpose and objective of the law to try actions on their merits, not to dismiss them on mere technicalities, Yelton v. Plantz, 77 N.E. 2d 895, 226 Ind. 155. Settled law, equity, and justice favor the granting of this pitition.

CONCLUSION The

Petition for a writ of certiorari should

be granted notwithstanding the fact that the petition is brought pro se. The factual basis for the complaint against SEC and party defenants has not been challanged. There has been no affirmative defense nor discovery upon which to base a conclusion that the allegations should not be subjected to a jury trial on the merits. The facts and settled law support the conclusion that there has never been a trial on the merits with respect to the issues alleged. The dismissal below was, based on a motion filed late. The fact of the late filing of the motion to dismiss was never addressed by the Court, no order granting the late filing. There was never a responsive pleading by the SEC as required in the finding of res judicata for purposes of dismissal. The basis of the SEC support of its motion was not the

proper support as required for dismissal based on res judicata. There is no immunity for improper acts as alleged in Plaintiffs/Appellants' complaint. Grounds for immunity in the structure of the system today do not exist where there is scienter The pro se nature of the case and the fact that the Judge had at the same time an action brought by a pro se litigant for malpractice against him, raises a question of bias, the judge should have disqualified himself on that basis alone. The nature of the close relationship with defendant attorney Miller should have brought about a withdrawal by the judge. On the basis of the facts and settled law Plaintiffs/Appellants submit that, this case should be remanded for trial on the merits. Plaintiffs/Appellants respectfully pray for such relief.

Respectfully Submitted May 29, 1986

J. Jerome Prevatte

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(pro se)

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APPENDIX A

No. 85-1521

UNITED STATES COURT OF APPEALS FOR

THE SIXTH CIRCUIT

J. JEROME PREVATTE AND	]
	]
WACO FINANCIAL, INC.,	]
	]
Petitioners,	]
v.	]
	]
SECURITIES AND EXCHANGE	]
	]
COMMISSION, et al	]
	]
Respondent .	]

Filed April 2, 1986

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN.

BEFORE: JONES and NELSON, Circuit Judges; and EDWARDS, senior Circuit Judge.

PER CURIAM.

Plaintiffs J. Jerome Prevatte and Waco Financial Inc. appeal the dissmissal of their complaint against the Securities and Exchagne Commission, its chairman, several

SEC employees and a private attorney who formally repesented WACO and Prevatte. They allege that the defendants unlawfully disqualified them from engaging in the securities business in violation of the constitution and the Racketeer Influence and Corrupt Organizations Act, 18 U.S.C. et seq. (1982).

The district court dismissed the federal due process clams on res judicata gounds in light of this court's decision in Securities and Exchange Commission v. WACO Financial Inc., 751 F.2d 831 (6th CKir. 1985) cert denied 106 S.Ct. 65 (1985). The remaining federal claims were dismissed because the district court determined that the SEC enjoyed sovereign immunity and the individual defendants enjoyued absolute immunity from liability. Based on these determinations, the district court

concluded that the pendant state claims must also be dismissed.

We have reviewed the records and briefs submitted by the parties and agree with the district court's disposition of this case.

Accordingly, we AFFIRM.

APPENDIX B

No. 85-1521

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

J. JEROME PREVATTE AND	]
WACO FINANCIAL, INC.,	]
	]
Petitioners,	]
	]
v.	]
	]
SECURITIES AND EXCHANGE	]
COMMISSION, et al	]
	]
Respondent.	]
	]

NOTICE OF APPEAL TO THE SUPREME COURT

OF THE UNITED STATES

1. Notice is hereby given that the Petitioners, Prevatte and Waco Financial, Inc. the Petitioners named herein above, hereby appeal to the Supreme Court of the

APPENDIIX B

United States from States from the Order of the Appeals Court For The Sixth Circuit Case No. 85-1521.

JURISDICTION

2. The jurisdiction of the Supreme Court is hereby invoked under Title 28 U.S.C. $ 1254(1) and under Rules Of The Supreme Court Part V., Rule 17.

3. Such Order as issued here, Petitioners submit fails to show even the bearing of intellectual imput, appearing rather to have been issued by a clerk of the Court without judicial deliberation or consideration of the substantive nature of the issues presented. This Petitioners recalls having heard one of the honorable judges state on Nov. 7, 1984, while observing it at oral arguments on 83-1309, "We all came to the same conclusions while flying up here last night." indicating the amount of

time and intellectual imput expanded on that days proceedings. Petitioners in the instant Appeal, had no opportunity for oral arguments, Petitioners submit, due to the pro se nature of their defense. Plaintiffs/Appellants submit that no citizen now can find equity or justice,in fact will not even be considered or given time by the Court unless one has come to the Court with an attorney, such should not be the case. Petitioners ask that Judicial notice be taken of the fact, that citizens have just as insistent a right, that the Court has a duty and that the Judges have a duty to treat equally, and deal responsibly with the subsubstantive issues Presented to them, and the responsibility to treat fairly all those who come before the Court. If this Court demands respect, it

must respect those who are unforunate enough to or need to come before it. The abrogation of the duties of the judiciary to the clerical staff appears to this litigant to be the norm at the Sixth Circuit Court of Appeals.

When the fact that clerks are doing the work of the judiciary and making the deisions for which the Judges becomes so obvious, that it is apparent to a pro se litigant, it is time gentlemen for change, or some introspection searching by the Court on its own initiative. If gentlemen you do not chose to do it, at some point it will be done for you. The system will not long survive the type of justice and law you at the 6th Circuit are dispensing. The sole purpose of the Court is for the seek-ing truth, equity and justice. If any can be found in the proceedings in the

administrative or the Court proceedings with reference to Prevatte and WACO we would appreciate having such pointed out to us.

Abuse of discretion and process has been the norm throughout the total proceedings from the NASD administrative action

---

1/ The NASD is the National Association of Securities Dealers, Inc. The only record in the instant action was developed by that Association (NASD). The SEC has made no determination on the issues herein address. There has been no administrative proceeding before the SEC the only action of the SEC was the denial of any order to produce the record or to require the NASD to follow its own rules in this administrative process as required per the Securities Exchange Act of 1934 as amended or Title 5 the Administrative Procedures Act. into the Gibson Court then on throughout the legal system,this it is appalling.
The denial of access amounts to suppression on the part of the Court in its continuing, single sided approach to the litigation herein addaddress. Anyone with any notion of justice and fair play should be appalled.

APPENDIIX B

THE RECORD

3. Petitioners request that the full record be forwarded from the Inferior Court to the Supreme Court Of The United States per the rule.

CAUSE FOR APPEAL

The Sixth Circuit Court has failed to address the substantive issues, the gravamen of the action and basis its order on a res judicata where inter alia the basis is administrative in nature and from which res judicata cannot follow. Where here has been no determination on the merits.

April 29, 1985 Respectfully Submitted

by_____

J. JEROME PREVATTE
835 W. Cedar ST.
Kalamazoo, MI. 49007
Counsel Pro Se
616 344-9091

CERTIFICATE OF SERVICE

I, J. Jerome Prevatte certify that I, on July 21, 1986 I caused to be served by first class mail, postage prepaid, Plaintiff/Appellants' Petition for Writ of Certiorari To The SUPREME COURT OF THE UNITED STATES.

July 21, 1986. By _____
J. Jerome Prevatte

The United States District Court
For The Sixth Circuit
United States Post Office & Courthouse
Cincinnati, Ohio 45202

The Securities and Exchange Commission
Office of General Counsel
450 5th St. N.W.
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555 Grand Plaza Place
220 Lyon Square
Grand Rapids, Michigan 49503

86-62

No. 85-____

Supreme Court, U.S.
FILED
JUN 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1985

J. JEROME PREVATTE, INDIVIDUALLY AND WACO FINANCIAL, INC.,

Petitioners,

V

SECURITIES AND EXCHANGE COMMISSION, ITS AGENTS AND EMPLOYEES; ET AL.,

Respondents.

RESPONDENT, KENNETH MILLER'S, BRIEF IN OPPOSITION TO PETITIONER'S REQUEST AND PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Petitioner has failed to present this Court with an issue or question necessitating a United States Supreme Court hearing as described in Federal Rules of Civil Procedure, Supreme Court 17.

II. Petitioner has neglected to abide by the procedural requirements for filing a writ of certiorari as described in Federal Rules of Civil Procedure, Supreme Court 21.

III. This Petition is merely a frivolous unwarranted claim filed by Mr. Prevatte to aid in his private vendetta against respondents. As such, respondent, Kenneth Miller, requests an award of damages pursuant to Federal Rules of Civil Procedure, 49(2).

IV. This Petition must fail as to WACO Financial, Inc., the corporation, as Jerome Prevatte, who is not a licensed attorney, may not properly represent the corporate entity of WACO Financial, Inc.

PARTIES

J. Jerome Prevatte, Individually and WACO Financial, Inc., Petitioners

v

Securities and Exchange Commission, John Shad, William Goldsbery, Frank Lash, Mary Weiss, William Gaynor, Frank Rothing, John Kuhn, David Brown and Kenneth Miller, Respondents.

TABLE OF CONTENTS

	Pages
QUESTIONS PRESENTED	i
LIST OF ALL PARTIES	ii
TABLE OF AUTHORITIES	iv
CITATIONS TO OPINIONS DELIVERED IN THE LOWER COURTS AND ADMINISTRATIVE AGENCIES	1
STATEMENT OF JURISDICTIONAL GROUNDS	1
CITATION TO PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS	2
STATEMENT OF CASE	5
SUMMARY OF ARGUMENT	7
ARGUMENT	11
CONCLUSION	20
APPENDIX	App. 1

INDEX OF AUTHORITIES

Pages

CASES CITED

Atkins v EI DuPonte DeNemours & Co., OKL, 69 SCT 85, 335 US 331 (1948) 17

Fay v Noia, NY, 83 SCT 822, 372 US 391 (1963) 11

Galveston Causeway Construction Co. v Galveston, H.S.A. Ry. Co., TEX, 43 SCT 503, 262 US 747 (1923) 16

Ginger v Cohn, 426 F.2d 1385 (1970) 19, 20

Grand Rapids Bar Association v Denkema, 290 Mich 56 (1939) 19

Jenkins v Banning, WIS, 64 US 455 (1860) 18

J. Jerome Prevatte, et al v Kenneth Miller, Circuit Court for Kalamazoo County, State of MI, No. D85-2743-NM (Judge Borsos) 6

J. Jerome Prevatte v NASD, Western District Federal Court, Michigan, No. K86-116CA4 7

Rice v Sioux City Memorial Park Cemetery, Iowa, 75 SCT 614, 349 US 70 (1955) 12

SEC v WACO Financial, Inc., 518 F. Supp 651 (1981) 1, 6

SEC v WACO Financial, Inc., 751 F.2d 831 (Sixth Cir. 1985), cert. denied, 54 US LW 3223 (1985) ..... 1, 6. App. 2

Southern Power Co. v North Carolina Public Service Co., NC, 44 SCT 164, 263 US 508 (1924) 16

WACO Financial, Inc. v. NASD, 513 F. Supp 758 (WD Mich 1981) 6, 15

WACO Financial, Inc. v SEC, 81-82 Fed. Sec. L. Rep. (CCH) ¶98, 220 (6th Cir.. July 9, 1981) 6

Whitney v Cook, Miss., 99 US 607 (1879) 18

TABLE OF AUTHORITIES—Continued

Pages

STATUTES CITED

Title 15 USC § 78 ..... 5, 6
Title 28 USCA § 1254 ..... 1, 11
Fed R. Civ. P. 17 ..... 2, 8, 11
Fed R. Civ. P. 21 ..... 3, 8, 10, 13, 14, 15
Fed R. Civ. P. 46 ..... 4, 9, 17
Fed R. Civ. P. 49 ..... 4, 10, 18, 20
MSA 27A 901 ..... App. 18

CITATIONS TO LOWER COURT OPINIONS

1) *J. Jerome Prevatte & WACO Financial, Inc. v SEC,* et al, No. 85-1521, US APP Ct (6th Cir.) April 2, 1986

2) *J. Jerome Prevatte & WACO Financial, Inc., v NASD/ SEC,* 513 F. Supp 758 (W.D. Mich 1981)

3) *J. Jerome Prevatte & WACO Financial, Inc., v SEC,* 81-82 F.2d L. REP (CCH) ¶98, 220 (6th Cir., July 9, 1981)

4) *SEC v WACO Financial, Inc.,* 518 F. Supp 651 (1981)

5) *SEC v WACO Financial, Inc.,* 751 F.2d 831 (6th Cir. 1985), *cert denied* 106 SC 65 (1985)

———o———

STATEMENT OF JURISDICTIONAL GROUNDS

United States Supreme Court may review an appellate Court decision concerning a civil dispute via a writ of certiorari pursuant to 28 U.S.C.A. Section 1254. This statute reads:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> (2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Thus, this Court has the authority to review the present petition. Although jurisdictional basis exists, such jurisdiction is discretionary in nature. For the reasons set forth herein, respondent, Kenneth V. Miller, requests this Honorable Court to deny petitioner's writ of certiorari and grant respondent, Kenneth V. Miller, expenses and attorney's fees pursuant to Federal Rule Civil Procedure 49(2).

CITATION TO PERTINENT SECTIONS OF CONSTITUTIONAL PROVISIONS, STATUTES, and REGULATIONS

Fed. R. Civ. P. 17:

1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Fed. R. Civ. P. 21:

1. The petition for writ of certiorari shall contain, in the order here indicated:

(a) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the Court.

(d) A reference to the official and unofficial reports of any opinions delivered in the courts or administrative agency below.

(e) A concise statement of the grounds on which the jurisdiction of this Court is invoked showing:

(i) The date of the judgment or decree sought to be reviewed, and the time of its entry;

(iv) The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations which the case involves, setting them out verbatim, and giving the appropriate citation therefor. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text then shall be set forth in the appendix referred to in subparagraph 1(k) of this Rule.

(g) A concise statement of the case containing the facts material to the consideration of the questions presented.

(i) If review of the judgment of a federal court is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance.

Fed. R. Civ. P. 46(3):

3. While making due allowance for any case presented under this Rule by a person appearing pro se, the Clerk will refuse to receive any document sought to be filed that does not comply with the substance of these Rules.

Fed. R. Civ. P. 49(2):

2. When an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages.

———o———

STATEMENT OF CASE

J. Jerome Prevatte, petitioner, is the president and major stockholder of WACO Financial, Inc. (WACO), a securities firm that was a member of the National Association of Securities Brokers and Dealers registered with the Securities and Exchange Commission (SEC). NASD is a direct branch of the SEC to provide a self regulating system for securities dealers. 14 U.S.C., Section 78o, requires NASD to govern brokers conduct and enforce compliance with the national standards and principles. Thus, NASD conducts adjudicative hearings for members accused of violating SEC rules and dispensing any appropriate disciplinary action and penalties.

There is a vast appellate system embodied within the disciplinary process with avenues to both the judiciary and administrative levels for an aggravated member. The initial disciplinary hearing occurs in a body known as the NASD District Business Conduct Committee; and action may be appealed to the Board of Governors, then on to the SEC, with final appeal in the U.S. Court of Appeals. 15 U.S.C. Section 78y(a).

Petitioner found himself involved in a series of district disciplinary hearings (NO. CHI-654 on March 27, 1980, NO. CHI-659 on August 1, 1980, NO. CHI-665 on December 5, 1980), for alleged violations of NASD rules (A.2). These hearings concluded that Prevatte violated numerous regulations and, therefore, petitioner was expelled from NASD and forbidden to act in a principle capacity with any NASD member (A.10).

Prevatte promptly appealed to the Board of Governors and followed the appellate route as each decision on

every level of the tier was upheld (A.12). Additionally, petitioner brought suit in the United States District Court for the Western District of Michigan seeking to enjoin NASD and the SEC from imposing sanctions against WACO pending his appeal. *WACO Financial, Inc. v NASD*, 513 F. Supp 758 (W.D. Mich 1981). The Court dismissed the complaint on April 24, 1981 due to Prevatte's failure to exhaust the administrative remedies available. In response, petitioner submitted a mandamus petition for a stay of the SEC sanctions to the Sixth Circuit Court of Appeals. The appellate tribunal also dismissed the request for failure to exhaust administrative remedies. *WACO Financial, Inc. v SEC*, 81-82 F. 2d. L. REP. (CCH) ¶ 98, 220 (6th Cir., July 9, 1981).

On July 30, 1981, the SEC dismissed petitioner's pending appeal concerning the disciplinary hearings for the first first and second complaint since Prevatte and WACO neglected to submit a brief as required (A.12). Although petitioner had a right to appeal this ruling pursuant to 15 U.S.C. Section 78y, Prevatte did not take any action. Simultaneously, the Securities and Exchange Commission filed suit in the Western District Federal Court to enjoin petitioners from operating as a broker in violation of SEC regulations. The Court entered a permanent injunction against Prevatte in *SEC v WACO Financial, Inc.*, 518 F. Supp 651 (1981), affirmed *SEC v WACO Financial, Inc.*, 751 F.2d 831 (6th Cir. 1985), *cert* denied, 54 U.S. LW 3223 (1985). Petitioner counter attacked this tactic by filing suit in the Kalamazoo Circuit Court against Respondent, Kenneth Miller, Circuit Court for Kalamazoo County, NO. D85-2743-NM (Judge Borsos), as well as initiating an ad-

ditional action in the Federal District Court, *J. Jerome Prevatte v NASD, et al,* NO. K86-116 CA4.

Undaunted, petitioner now requests this Court to overturn the Sixth Circuit Appellate Court decision and order an entry for new trial. This tangled web of litigation thrust and parry has merely clogged a saturated judicial machine. The Courts must efficiently utilize their precious time to adjudicate genuine actions. Yet, petitioner insists in pursuing his interests by submitting a writ of certiorari that fails to meet the requisite jurisdictional requirements and contains multitudes of procedural errors.

Further, Mr. Prevatte, who is not a lawyer, presumes he may represent the corporate entity, WACO Financial, Inc., in pro se. Although an individual's right to represent himself is not disputed, a person who is not a licensed attorney may not act as legal representative for a corporation.

———o———

SUMMARY OF ARGUMENT

Petitioners' writ of certiorari is inadequate in numerout instances and therefore, the petition for Supreme Court reviewal should be denied.

The basic requirement for the United States Supreme Court to review an appellate tribunal decision is an authorized jurisdictional foundation. Jurisdiction may be invoked via petition for writ of certiorari. However, such jurisdiction is triggered only in circumstances where federal questions have been decided in conflicting manners by federal appellate courts and/or state courts of the last re-

sort, resulting in discrepancies and confusion within the federal law. Fed. R. Civ. P. 17. Petitioner, however, is merely advocating an 'unfair decision and trial' because he disagrees with the courts' rulings. Mr. Prevatte and WACO seem to disregard the necessity for approaching this court with a legitimate question and issue to review. Thus, respondent, Kenneth V. Miller, contends this petition should be denied for lack of a proper question of law and appropriate jurisdictional basis.

Petitioners have failed to abide by the procedural requirements for filing a writ of certiorari cited in Federal Rule Civil Procedure 21. This writ contains six distinct procedural errors. Petitioners have neglected to provide:

(1) a reference to the official and unofficial reports and opinions delivered in a lower court or administrative agencies;

(2) a concise statement specifying the grounds for Supreme Court jurisdiction including the judgment or decree sought to be reviewed accompanied by its date of entry;

(3) a cite to the constitutional provisions, treaties, statutes, regulations, and ordinances which the case involves, *setting them out verbatim*;

(4) a *succinct*, factual statement of this action;

(5) an indication of the jurisdictional basis in the court of the first instance; and

(6) a clear, definite and complete disclosure of the issues in controversy.

Petitioner made a cursory attempt to comply with certain aspects of Fed. R. Civ. P. 21, while other requirements are avoided completely. Actually, it is impossible for petitioners to abide by Fed. R. Civ. P. 21(i) because

the Federal District Court, the tribunal is the first instance, determined it did *not* have jurisdiction to adjudicate Prevatte's claims. A number of subsections within this statute have been addressed similarly.

Mr. Prevatte, however, maintains that the claim on behalf of himself and WACO should survive. He hints he has been abused by the judicial system simply by proceeding as an in pro se litigant. Prevatte's arguments must fail for two reasons. First, Jerome Prevatte is acting as a legal representative for WACO Financial, Inc. However, it is a settled legal principle that an individual who is not a licensed attorney may not appear on behalf of a corporation, despite his/her capacity as an officer of such company. An individual has a constitutional right to represent himself in an action. However, this right does not authorize or entitle the person to act on behalf of the corporate entity. As such, these proceedings are a nullity as to the corporation, WACO Financial, Inc. Therefore, this petition does not reflect a properly asserted cause for WACO Financial, Inc.

Second, federal statutes and regulations acknowledge one's right to assert an action in pro se. However, the pro se litigant, as all parties, must abide by the procedural statutes. While due allowance will be made for any case presented by an individual in pro se, the petition for writ of certiorari will be refused that does not comply with the substance of the federal Supreme Court procedural rules. Fed. R. Civ. P. 46(3). Petitioner's writ embodies six procedural errors; certain subsections of the rules are impossible to meet. Such mistakes extend beyond minor and technical violations. Petitioner has not complied with the necessary procedures and, therefore, respondent, Kenneth

V. Miller, contends this writ of certiorari should be denied.

Finally, Federal Rule Civil Procedure 21.5 states, "the failure of petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying his petition." The writ is a lengthy, redundant debate attempting to procure a decision in Mr. Prevatte's favor. Petitioner's document represents the opposite spectrum of 'clearness and brevity'.

Further, this petition is coupled by four additional lawsuits pending in various tribunals; each action is filed against these respondents based on the disciplinary proceedings taken by the NASD/SEC against Mr. Prevatte in 1980 and 1981. The writ is an unnecessary, unwarranted claim filed to harass and aggravate respondents. Federal Rule Civil Procedure 49(2) was drafted specifically to deter meritless actions, such as the case at bar. This statute authorizes the Court to award damages when a frivolous writ is submitted. Prevatte is clearly utilizing the court system to punish and abuse respondents. Therefore, respondent, Kenneth V. Miller, requests this court to award him damages for expenses and attorney fees incurred in defending these actions, pursuant to Federal Rule Civil Procedure 49(2).

WHEREFORE, respondent, Kenneth V. Miller, respectfully requests this Honorable Court to deny this petition for writ of certiorari and grant respondent, Kenneth V. Miller, his expenses and attorney's fees for defending these actions pursuant to Federal Rule Civil Procedure 49(2).

ARGUMENT

The highest court in the land has the authority to review appellate court decisions via a writ of certiorari in civil matters. Title 28 USCA § 1254. However, whether an appeal is granted is optional. "A review on writ of certiorari is not a matter of right, but of judicial discretion." Fed. R. Civ. P., SCT, 17. This mode of invoking the United States Supreme Court's appellate jurisdiction is utilized only where there are special and important reasons therefore. *Fay v Noia*, NY 1963, 83 SCT 822, 372 US 391.

Fed. R. Civ. P. 17 indicates the character of questions that this Court will consider. Such issues are:

1. When a federal court of appeals has rendered a conflicting decision with an equivalent federal court or state court of the last resort on the same matter;
2. When a federal court ruling on a federal question conflicts with a determination issued by the state court of last resort, or, such federal decision greatly exceeds the accepted course of judicial proceedings;
3. When a state court of last resort rules on a federal question that conflicts with decisions made by equivalent sister-state courts or federal court of appeals on the same matter; and
4. When a state or federal court of appeals determines an important federal question of law which has not been addressed, but should be, by the United States Supreme Court.

This Petition supplies the Court with a litany of wrongs committed by the Securities and Exchange Com-

mission and inferior courts, and requests this Court to relitigate the original hearing. Petitioner neglects to present an issue wherein the Sixth Circuit Court of Appeals has delivered a conflicting decision with the state court of last resort or equivalent federal court, or alternatively, made a determination on an unsettled issue of federal law. Further, this appeal does not pose a substantial and special dilemma mandating supreme court scrutiny. "Special and important reasons" relate to problems beyond the academic or episodic, especially where the issues involved reach constitutional dimensions. *Rice v Sioux City Memorial Park Cemetery,* Iowa 1955, 75 SCT 614. 349 US 70. To constitute a question in this catagory, the issue must be a critical discrepancy in an unsettled, acute area of the law. Certiorari should not be granted except in cases involving principals whose resolution are crucial to the public, as distinguished from that of the parties, and in instances where a real and embarrassing conflict of opinions exist between court of appeals. *Rice v Sioux City Memorial Park Cemetery,* Supra. There is not any urgency or eminent authority struggle embodied in the case at bar. This writ lacks any constitutional concern that exceeds the inferior court's authority or ability to settle.

The Petitioner inquires whether:

> "There is a right to be free from the Securities and Exchange Commission bad faith prosecution; res judicata may be the basis for dismissal where it was not raised as an affirmative defense; administrative proceedings are subject to res judicata; the District Court has jurisdiction over improper conduct of its officers; the inferior court may properly make a determination that the intent of the parties cause of action is, other than that actually intended; and the

> Judge may properly adjudicate the action which involves allegations of attorney malfeasance when that Judge has a pro se malpractice action pending against him''. Prevatte Writ of Certiorari, Questions Presented, one through six.

Each problem enumerated has been properly and adequately addressed by the Federal Judiciary System. Also, such issues involve settled regulations and legal principles. Mr. Prevatte is merely attempting, yet again, to compel the judicial system to produce a verdict that meets his approval. Simply, Petitioner has failed to present an issue worthy of this Court's attention.

PETITIONERS HAVE FAILED TO MEET THE PROCEDURAL REQUIREMENTS FOR FILING A WRIT OF CERTIORARI PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 21.

Fed. R. Civ. P. 21 specifically lists the procedure a moving party must comply with to petition the Supreme Court for a writ of certiorari. The code states in Section (d) that a reference to official and unofficial reports of any opinions delivered in the courts or administrative agencies be incorporated into the writ. Petitioner does inform the Court that he was heard before a Western Michigan District Court and the Sixth Circuit Court of Appeals, however, he neglects to disclose the inferior Court's decisions. Rather, Mr. Prevatte authors a mini-argument of the alleged errors of each bench. As such, Petitioner has failed to comply with Federal Rules of Procedure 21 (d).

A moving party is directed to provide a concise capsulate providing the grounds for Supreme Court juris-

diction. Fed. R. Civ. P. 21 (e). This statement shall contain:

1. The judgment or decree date sought to be reviewed and the time of its entry; and
2. The statutory provision conferring jurisdiction on the Court.

Petitioner has a section in his writ entitled "Jurisdiction" that fills six (6) pages without specifying any judgment date. Respondent, Kenneth Miller, assumes from pages two and three of the writ, Petitioner is claiming error resulted from the Court Decisions, in conjunction with, proposing wrongful conduct was prevalent in the initial Securities and Exchange Commission disciplinary hearings. However, the judgment or decree of each decision is absent, as well as, their time of entry. Therefore, Petitioner has failed to comply with Fed. R. Civ. P. 21 (e).

Court Rule 21 (f) requires "the constitutional provisions, treaties, statutes, ordinances, and regulations which the case involves, *setting them out verbatim,* and giving the appropriate citation therefor" to be incorporated into the petition. This writ is littered with case law supporting the principals of "fundamental fairness" and the right to "due process of law". However, Petitioner has neglected to present and illuminate any regulation or constitutional provision providing the basis of this appeal. Thus, the docket also lacks verbatim language and accompanying citations of such phantom provisions. Perhaps the Court is to ascertain the statutory foundation from the pleadings in total. Clearly, Petitioner has not complied with the commands of Fed. R. Civ. P. 21 (f).

Section (g) of this Court rule demands a concise, factual statement of the action. The Code is requesting a succinct history of the dispute. Petitioner, however, has failed to supply the Court with the chain of events that produced this writ. Rather, he provides a verbose, rambling decription of various alleged wrongs against particular parties and attempts to argue his position within the detailed account. This prolix composition is far from a concise reiteration of the facts. Therefore, Petitioner has failed to abide by Fed. R. Civ. P. 21 (g).

Any writ of certiorari requesting review of a federal court judgment shall include into the statement of the case the basis for federal jurisdiction in the Court of first instance. Fed. R. Civ. P. 21 (i). A moving party must delineate to the Supreme Court the original source of federal jurisdiction. Petitioner ignores this dictum completely. Mr. Prevatte has not even made a cursory attempt to adhere to Fed. R. Civ. P. 21 (i). Perhaps Petitioner must disregard this requirement since the U.S. District Court determined in *WACO Financial, Inc. & Jerome Prevatte v NASD,* 513 F. Supp. 758 (1981) that it did not have the jurisdictional basis to adjudicate such action. The proper avenue available for WACO and Prevatte to assert their claims was before the Securities and Exchange Commission, rather than skirting the administrative process. Thus, the Court of first instance did not have the requisite jurisdictional foundation. Mr. Prevatte does not acknowledge this necessity. Throughout the narrative, such jurisdiction is simply not addressed. Thus, Petitioner is unable to comply with Fed. R. Civ. P. 21 (i).

The high court must have a succinct and concise writ to adequately determine whether it will grant reviewal of an appeal. "A petition to the United States Supreme Court for writ of certiorari shall make a *clear, definite* and *complete* disclosure concerning the controversy, since it is impossible for the Court to critically examine the record before ruling on the application, and it must rely largely on preliminary papers". (emphasis added) *Southern Power Company v North Carolina Public Service Company,* NC 1924, 44 SCT 164, 263 US 508. Further, Fed. R. Civ. P. 21 1(a) requires the questions presented for review to be "short and concise and should not be argumentative or repetitious". Petitioner, however, presents a lengthy, redundant debate as the questions presented. Writs of this nature have been rejected due to their lack of clarity. A petition will be denied when it contains no summary, short statement, or general reasons relied on for its allowance, though the record contains one thousand pages. *Galveston Causeway Construction Company v Galveston, H & S.A. Company,* TX 1923, 43 SCT 503, 262 US 747. As such, petitions for writs of certiorari will be accepted contingent upon their clarity and content.

Petitioner's writ, however, is a windy account of alleged wrongs absent any supportive legal authority. The questions, statement of the case, and authorized jurisdiction sections merge and mingle into a litany of claimed errors. The writ is confusing, at best, forcing this Court to sift through arguments, redundant diction, and factual assertions to ascertain the foundation of this petition. Therefore, respondent, Kenneth Miller, respectfully requests this Honorable Court to deny certiorari on the basis that Petitioner has failed to comply with the pro-

cedural regulations gc /erning the manner to invoke United States Supreme Court jurisdiction.

A REQUEST FOR WRIT OF CERTIORARI MAY BE DENIED ALTHOUGH FILED VIA A PRO SE LITIGANT, WHEN SUCH PETITION DOES NOT COMPLY WITH THE SUPREME COURT FEDERAL RULES OF CIVIL PROCEDURE.

An individual's right to represent one's self in a legal dispute is recognized and addressed via statutes and the Federal Rules of Civil Procedure. Naturally, persons who are not trained in the legal profession will not be well versed in procedural requirements. Nevertheless, while due allowance will be made for any case presented under this rule by an individual appearing pro se, the clerk will refuse to receive any document sought to be filed that does not comply with the substance of these rules. Fed. R. Civ. P. 46(3). Petitioner's writ contains seven distinct procedural errors, in addition to its total lack of jurisdictional foundation. Such solecisms are more than minor technical violations. The basis to invoke Supreme Court jurisdiction surely addresses the root and substance of these rules.

This Court has not hesitated to deny certiorari in comparable instances. In *Atkins v E. I. DuPont DeNemours and Company*, OKL 1948, 69 SCT 85, 335 US 331, the Court ruled that it was not required to grant appeal in forma pauperis or pro se, if the movant wrongfully persists in including masses of plainly irrelevant issues in the appeal record. Further, the Court has the duty and power to protect the public from financing wholly unnecessary matters and appeals. *Atkins v E. I.*

DuPont, Supra. Petitioner has four additional lawsuits pending before various tribunals; each action is filed against these respondents based on the disciplinary proceedings taken by the NASD/SEC against Mr. Prevatte in 1980 and 1981. Although to date Petitioner has failed to succeed in his crusade to overturn the rulings of the original disciplinary hearings, respondents must bear the financial burden of defending such a meritless venture. Petitioner persists in filing voluminous pleadings in pursuit of his personal vendetta simply to harass respondents.

Fed. R. Civ. P. 49(2) specifically states that when an appeal or petition for writ of certiorari is frivolous, the Court may award the respondents appropriate damages. This is a necessary regulation to discourage insignificant, trivial, and unwarranted actions. The only way to dissuade frivolous appeals and writs is by the use of the power to award damages. The rule will be enforced in proper cases, both according to its title and spirit. Parties should not be subject to petitions and delays without reasonable cause, and the power to compensate for an unwarranted delay or claim ought not be overlooked. *Whitney v Cook*, MISS 1879, 99 US 607; *Jenkins v Banning*, WIS 1860, 64 US 455. A damage award may be the only effective method of preventing Petitioner from progressing all his actions to the present stage.

Petitioner has had the ample opportunity before the NASD Board of Governors, the Securities and Exchange Commission, the Federal District Court, the Western Michigan Circuit Court, and the Sixth Circuit Federal Court of Appeals to present his arguments before a fair tribunal. This history illustrates that Mr. Prevatte has

transformed the legal system into a weapon to abuse and harass respondents. As such, respondent, Kenneth Miller, requests this Court to implement Federal Rule of Civil Procedure 49(2) and award damages to respondent, Kenneth Miller, for expenses occurred in defending these actions, as well as, attorney's fees.

J. JEROME PREVATTE IS NOT A LICENSED ATTORNEY, THUS, HE HAS NO LEGAL STATUS TO REPRESENT A CORPORATION IN PRO SE. THEREFORE, THIS PLEADING FILED ON BEHALF OF WACO FINANCIAL, INC. IS A NULLITY.

There are two petitioners in this proceeding; J. Jerome Prevatte, Individually, and WACO Financial, Inc. The writ which has been filed seeks relief on behalf of both petitioners. J. Jerome Prevatte has sought to present the claims of both parties on an in pro se basis. While an individual has a constitutional right to appear in a court of law and represent himself in asserting a claim which belongs to him, such individual has no right to represent another in the practice of law unless that individual is a licensed attorney. MSA 27A.901.

The practice of law has been held to include more than appearance in court, and specifically encompasses the preparation of pleadings. *Grand Rapids Bar Association v Denkema,* 290 Mich 56 (1939).

In *Ginger v Cohn,* 426 F. 2nd 1385 (1970), the U.S. Court of Appeals, Sixth Circuit, in applying Michigan law, held that an individual not licensed to practice law may not represent a corporation despite his capacity as an officer of such corporation. The corporate officer in

Ginger was a disbarred attorney. The Court specifically held:

> "An officer of a corporation, who is not a licensed attorney, is not authorized to make an appearance in this Court on behalf of the corporation. Ann., 157 ALR 284."

J. Jerome Prevatte claims that he is the "alter ego" of WACO Financial, Inc. Nevertheless, he is not an attorney at law and he has no legal status to represent a corporation in this Court. The pleadings purportedly filed on behalf of WACO Financial, Inc., are a nullity and this Court should determine that no proper case has been asserted.

———o———

CONCLUSION

WHEREFORE, respondent, Kenneth Miller, respectfully requests this Honorable Court to deny the Petition for Writ of Certiorari and award respondent, Kenneth Miller, damages of expenses and attorney's fees pursuant to Federal Rules of Civil Procedure 49(2).

Respectfully submitted,

/s/ William J. Heaphy P14799
Attorney for Respondent,
Kenneth V. Miller
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APPENDIX

No. 85-1521

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

J. JEROME PREVATTE, AND WACO FINANCIAL, INC., INDIVIDUALLY AND AS ALTER EGO OF WACO FINANCIAL, INC.,

Plaintiffs-Appellants,

v.

THE SECURITIES AND EXCHANGE COMMISSION; IT'S AGENTS AND EMPLOYEES; MORE SPECIFICALLY, JOHN SHAD; WILLIAM GOLDSBERRY; MARY WEISS; WILLIAM GAYNOR; FRANK ROTHING; MIKE LAUSH; JOHN KUHN; DAVID BROWN; AND UNASSOCIATED INDIVIDUAL KENNETH V. MILLER,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN.

(Filed April 2, 1986)

BEFORE: JONES and NELSON, Circuit Judges; and EDWARDS, Senior Circuit Judge.

PER CURIAM: Plaintiffs J. Jerome Prevatte and Waco Financial Inc. appeal the dismissal of their complaint against the Securities and Exchange Commission, its chairman, several SEC employees and a private attorney who formally represented WACO and Prevatte. They alleged that the defendants unlawfully disqualified them from engaging in the securities business in violation of the Constitution and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.* (1982).

The district court dismissed the federal due process claims on *res judicata* grounds in light of this court's decision in *Securities and Exchange Commission v. WACO Financial Inc.*, 751 F.2d 831 (6th Cir. 1985) *cert. denied* 106 S.Ct. 65 (1985). The remaining federal claims were dismissed because the district court determined that the SEC enjoyed sovereign immunity and the individual defendants enjoyed absolute immunity from liability. Based on these determinations, the district court concluded that the pendent state claims must also be dismissed. We have reviewed the records and briefs submitted by the parties and agree with the district court's disposition of this case. Accordingly, we AFFIRM.

WACO FINANCIAL, INC. and J. Jerome, Prevatte,

Plaintiff,

v.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. and Securities and Exchange Commission,

Defendants.

No. K81-73 CA4.

United States District Court,
W. D. Michigan, S. D.

April 24, 1981.

Securities dealer and its president sought to enjoin the implementation of a decision of the National Association of Securities Dealers censuring dealer and expelling it from its membership. The dealer's president was also censured and barred from association, as a financial prin-

cipal, with any NASD member. On plaintiffs' motion for a preliminary injunction, the District Court, Benjamin F. Gibson, J., held that the Securities and Exchange Commission was entitled to deny a stay pending SEC review of its decision, in that expulsion from NASD pending review did not constitute irreparable injury and the dealer's claims did not rise to the level of being clear and unambiguous constitutional violations, warranting dispensation with the doctrine of exhaustion of administrative remedies.

Motion denied and complaint dismissed.

Theodore H. Amshoff, Jr., Louisville, Ky., Robert D. Mollhagen, Kalamazoo, Mich., for plaintiff.

Andrew McR. Barnes, Washington, D. C., for NASD.

Michael K. Wolensky, Washington, D. C., Mary Weiss, Chicago, Ill., Robert C. Greene, U. S. Atty., Grand Rapids, Mich., for SEC.

OPINION

BENJAMIN F. GIBSON, District Judge.

This suit involves plaintiff WACO's status as a member of the National Association of Securities Dealers, Inc. (hereinafter 'NASD') and that of its president, plaintiff J. Jerome Prevatte as a registered financial principal. It is presently before this Court pursuant to plaintiff's motion for a preliminary injunction.

The relevant facts are simple. The timing of this suit is unique. Sometime in 1980, the NASD filed two complaints against plaintiffs for their alleged failure to comply with certain rules of that association. On November 24, 1980 the District 8 Business Conduct Committee issued its

findings of violations of those rules. As a result, plaintiff WACO was censured and expelled from its membership with the NASD. Plaintiff Prevatte was also censured and barred from association, as a financial principal, with any NASD member. In accordance with the applicable procedure, plaintiffs appealed those decisions to the NASD's Board of Governors. The penalties were stayed pending the outcome of that appeal. On March 19, 1981 the Board issued its opinion affirming the findings and penalties imposed by the District Committee.

From this point forward, the proceedings against plaintiffs are governed by the provisions of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78kk. Specifically, § 76e(d)(1) and § 78s(e)(1) provide the mechanics for appeal of a final decision of the self-regulating NASD to the appropriate regulatory agency (in this case, the Securities and Exchange Commission—hereinafter 'SEC').

The SEC is required to give the disciplined member a hearing on appeal but according to the 1975 amendments to the Act, that hearing may consist only of a review of the NASD's record along with an opportunity for interested parties to present reasons for the affirmance, modification or setting aside of the NASD's action. 15 U.S.C. § 78s(e)(1). Thereafter, review of the SEC's action may be had in the United States Court of Appeals. 15 U.S.C. § 78y. The 1975 amendments also changed the prior provisions of the Act with respect to the status of any NASD-imposed penalties pending review by the SEC. The statute now provides that the application for SEC review shall not operate as a stay unless the Commission decides to the contrary. 15 U.S.C. § 78s(d)(2).

On March 23, 1981, plaintiffs applied for review of the NASD's decision to the SEC. At the same time, plaintiffs requested a stay of the penalties imposed. Prior to any decision by the SEC on the request for a stay, plaintiffs brought suit in this Court for a temporary restraining order and preliminary injunction. They contend that the Act and the NASD rules constitute unconstitutional deprivations of due process of law in several respects.

The attack against the NASD rules centers around the absence of a statute of limitations, the lack of mechanisms, for discovery prior to the NASD hearings, the composition of the NASD panels, and prosecutorial involvement in selection of the panel and rendering of the Committee's decision. Plaintiff's further contend that their treatment at the hands of the NASD was arbitrary and capricious. The two aforementioned 1975 amendments to the Securities Exchange Act of 1934 are the focus of the balance of the plaintiffs' constitutional attack. They contend that the combined effect of 15 U.S.C. § 78s(e)(1) and § 78s(d)(2) subjecting them to NASD penalties prior to adjudication of their constitutional claims in the Court of Appeals is a fifth amendment violation of due process of law.

The threshold issue is whether this Court has subject matter jurisdiction to entertain plaintiffs' claims. They assert jurisdiction under 28 U.S.C. § 1331 and § 1337 (federal question); 28 U.S.C. § 2201 and § 2202 The Declaratory Judgment Act); 5 U.S.C. §§ 702, 705, 706 (The Administrative Procedures Act) and 15 U.S.C. § 78a et seq. (The Securities Exchange Act of 1934). Assuming that this Court does have jurisdiction, it must decide whether

to exercise it prior to any action by the SEC with respect to plaintiffs' appeal.

At the outset this Court notes a well established principle that the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, is not a grant of jurisdiction. The purpose of the Act was to enlarge the scope of remedies available in cases where the federal court has an independent substantive basis for jurisdiction. *King v. Sloane,* 545 F.2d 7 (6th Cir. 1976); *American Airlines, Inc. v. Louisville & Jefferson Co. Air Bd.,* 269 F.2d 811 (6th Cir. 1959); *Muskegon Piston Ring Co. v. Olsen,* 307 F.2d 85 (6th Cir. 1962), *cert. den.* 371 U.S. 952, 83 S.Ct. 508, 9 L.Ed.2d 500; *Stanley v. Avery,* 387 F.2d 637 (6th Cir. 1968), *cert. den.* 390 U.S. 1044, 88 S.Ct. 1641, 20 L.Ed.2d 304. Additionally, the Administrative Procedures Act is not an independent grant of jurisdiction. *Califano v. Sanders,* 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977); *Allan v. Securities & Exchange Comm.,* 577 F.2d 388 (7th Cir. 1978).

Jurisdiction must then lie either under 28 U.S.C. §§ 1331, 1337 of the Securities Exchange Act of 1934. In light of the provisions of 28 U.S.C. § 78y for review in the Court of Appeals after final action by the SEC, the role of the district courts, if any, is not well defined. The indications are, however, that this Court may have subject matter jurisdiction under § 1331 or § 1337 of plaintiffs' constitutional claims unless Congress' intent to foreclose such an avenue of review is manifested by clear and convincing evidence within the Securities Exchange Act. *Califano v. Sanders,* 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977). The Act has been found not to exhibit such a clear Congressional intent. *Wolf Corp. v. Securities & Exchange Comm.,*

317 F.2d 139 (D.C.Cir.1963); *First Jersey Securities, Inc. v. Bergen,* 605 F.2d 690 (3rd Cir. 1979). The question of whether to exercise such jurisdiction prior to review of the NASD's action by the SEC must yet be answered.

The *First Jersey Securities Court* held that the comprehensiveness of the scheme of the Act suggested that the district courts should apply the concept of exhaustion of administrative remedies prior to exercising any jurisdiction they may have. Accordingly, this Court must determine whether the situation presented by this case is sufficient to invoke an exception to the exhaustion requirement.

Two exceptions to that requirement have been recognized in cases involving the Securities Exchange Act—where the administrative process is clearly shown to be inadequate in preventing irreparable injury or where there has been or will be a clear and unambiguous statutory or constitutional violation. *First Jersey Securities, Inc. v. Bergen,* 605 F.2d 690 (3rd Cir. 1979); *Wolf Corp. v. Securities & Exchange Comm.,* 317 F.2d 139 (D.C.Cir.1963); *OKC Corp. v. Williams,* 461 F.Supp. 540 (D.C.Tex.1978). *See also School District of City of Saginaw, Mich. v. United States, Dept. of HEW,* 431 F.Supp. 147 (D.C. Mich. 1977) (Title VI), *Boise Cascade Corp. v. Federal Trade Comm.,* 498 F.Supp. 772 (D.C.Del.1980) (antitrust). This Court does not find that, under the present posture of this action, plaintiffs are able to hurdle either of those exceptions.

The mere allegation of a constitutional violation is insufficient to constitute irreparable harm. *Boise Cascade Corp. v. Federal Trade Comm.,* 498 F.Supp. 772 (D.C.Del. 1980). Those claims can be reviewed in the

Court of Appeals after exhaustion of the administrative process. Cost incurred by plaintiffs due to any delay in review has been held not to constitute irreparable injury. *First Jersey Securities, Inc. v. Bergen*, 605 F.2d 690 (3rd Cir. 1979). *See also Sampson v. Murray*, 415 U.S. 61, 94 S.Ct. 937, 39 L.Ed.2d 166 (1974). Expulsion from the NASD pending review of those claims has been held not to constitute irreparable injury in light of the broad discretion given to the SEC to protect the interests of the investing public. *Associated Securities Corp. v. Securities & Exchange Comm.*, 283 F.2d 773 (10th Cir. 1960).

The ultimate question is whether plaintiffs' claims rise to the level of being clear and unambiguous constitutional violations. This Court cannot say that they do. In general, the Securities Exchange Act and the NASD system of self-regulation have repeatedly withstood constitutional attack. *R. H. Johnson & Co. v. Securities & Exchange Comm.*, 198 F.2d 690 (2nd Cir. 1952), *cert. den.* 344 U.S. 855, 73 S.Ct. 94, 97 L.Ed. 664; *Todd & Co. v. Securities & Exchange Comm.*, 557 F.2d 1008 (3rd Cir. 1977); *First Jersey Securities, Inc. v. Bergen*, 605 F.2d 690 (3rd Cir. 1979) (claim of bias); *Nassau Securities Service v. Securities & Exchange Comm.*, 348 F.2d 133 (2nd Cir. 1965) (composition of NASD tribunals); *Allan v. Securities & Exchange Comm.*, 577 F.2d 388 (7th Cir. 1978) (SEC's discretion to issue stay pending appeal). This Court likewise does not believe that the plaintiffs' claims as to the absence of discovery mechanisms or the alleged lack of a statute of limitations rise to the level of clear and unambiguous constitutional violations. The concept of a constitutional right to discovery in judicial or quasi-judicial proceedings has been rejected. *Nat'l Lab. Rel.*

Bd. v. Interboro Contractors, Inc., 432 F.2d 854 (2nd Cir. 1970). *See also Sloan v. New York Stock Exchange*, 489 F.2d 1, n.1 (2nd Cir. 1973). This Court has not been directed to any authority for the proposition that one has a constitutional right to a statute of limitations.

Since the inception of this suit, the real thrust of plaintiffs' claim has been against the impact of the 1975 amendments to the Act. If the SEC refuses plaintiffs' request for a stay, they will be subjected to expulsion from the NASD until such time as the vindication of their alleged constitutional claims regarding bias, prosecutorial involvement, absence of discovery and lack of a statute of limitations before the Commission or in the Court of Appeals. Plaintiffs contend that they have a constitutional right to be free of sanctions or penalties prior to the ultimate adjudication of their claims. The Supreme Court does not agree and has declined to recognize such a right even in the face of irreparable injury. *Yakus v. United States*, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834 (1944). The Seventh Circuit has specifically rejected a claim that leaving the question of the propriety of a stay to the SEC's discretion under the Act is a deprivation of due process. *Allan v. Securities & Exchange Comm.*, 577 F.2d 388 (1978).

Consequently, this Court does not find this case to be in such a posture as to require an exception to the exhaustion rule. It is entirely possible that the SEC will issue a stay, thus rendering plaintiffs' claims moot. It is also possible that the SEC will allow more than a review merely on the record in plaintiffs' case pending before the Commission. The 1975 amendment to § 78s(e)(1)

does not preclude a *de novo* review. In light of these possibilities and the absence of irreparable injury or a clear constitutional violation, this appears to be a case where there should be exhaustion of administrative remedies.

Accordingly, plaintiffs' motion for a preliminary injunction is denied and the complaint is dismissed.

IT IS SO ORDERED.

Rule 17. Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court,

or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of of[1] the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

(As amended July 5, 1984, eff. Aug. 1, 1984.)

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* * *

Rule 21. The petition for certiorari

.1. The petition for writ of certiorari shall contain, in the order here indicated:

(a) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the Court.

(b) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, except where the caption of the case in this Court contains the names of all parties. This listing may be done in a footnote. See Rule 28.1.

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[1] So in Original.

(c) A table of contents and table of authorities, if required by Rule 33.5.

(d) A reference to the official and unofficial reports of any opinions delivered in the courts or administrative agency below.

(e) A concise statement of the grounds on which the jurisdiction of this Court is invoked showing:

(i) The date of the judgment or decree sought to be reviewed, and the time of its entry;

(ii) The date of any order respecting a rehearing, and the date and terms of any order granting an extension of time within which to petition for certiorari; and

(iii) Where a cross-petition for writ of certiorari is filed under Rule 19.5, reliance upon that Rule shall be expressly noted and the cross-petition shall state the date of receipt of the petition for certiorari in connection with which the cross-petition is filed.

(iv) The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations which the case involves, setting them out verbatim, and giving the appropriate citation therefor. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text then shall be set forth in the appendix referred to in subparagraph 1(k) of this Rule.

(g) A *concise* statement of the case containing the facts material to the consideration of the questions presented.

(h) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings, both in the court of first instance and in the appellate court, at which the federal

questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court; such pertinent quotation of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, ruling on exception, portion of court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on writ of certiorari.

Where the portions of the record relied upon under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(k) of this Rule.

(i) If review of the judgment of a federal court is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance.

(j) A direct and concise argument amplifying the reasons relied on for the allowance of the writ. See Rule 17.

(k) An appendix containing, in the following order:

(i) Copies of any opinions, orders, findings of fact, and conclusions of law, whether written or oral (if recorded and transcribed), delivered upon the rendering of the judgment or decree by the court whose decision is sought to be reviewed.

(ii) Copies of any other such opinions, orders, findings of fact, and conclusions of law rendered by courts or administrative agencies in the case, and, if reference thereto is necessary to ascertain the grounds of the judgment or decree, of those in companion cases. Each of these documents shall include the caption showing the name of the issuing court or agency

and the title and number of the case, and the date of its entry.

(iii) A copy of the judgment or decree sought to be reviewed and any order on rehearing, including in each the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry of the judgment, decree, or order on rehearing.

(iv) Any other appended materials.

If what is required by this paragraph or by subparagraphs 1(f) and (h) of this Rule, to be included in the petition is voluminous, it may, if more convenient, be separately presented.

.2. The petition for writ of certiorari shall be produced in conformity with Rule 33. The Clerk shall not accept any petition for writ of certiorari that does not comply with this Rule and with Rule 33, except that a party proceeding *in forma pauperis* may proceed in the manner provided in Rule 46.

.3. All contentions in support of a petition for writ of certiorari shall be set forth in the body of the petition, as provided in subparagraph 1(j) of this Rule. No separate brief in support of a petition for a writ of certiorari will be received, and the Clerk will refuse to file any petition for a writ of certiorari to which is annexed or appended any supporting brief.

.4. The petition for writ of certiorari shall be as short as possible, but may not exceed 30 pages, excluding the subject index, table of authorities, any verbatim quotations required by subparagraph 1(f) of this Rule, and the appendix.

.5. The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

(As amended Oct. 21, 1980, eff. Nov. 21, 1980.)

* * *

Rule 46. Proceedings in forma pauperis

.1. A party desiring to proceed in this Court *in forma pauperis* shall file a motion for leave so to proceed, together with his affidavit in the form prescribed in Fed. Rules App.Proc., Form 4 (as adapted, if the party is seeking a writ of certiorari), setting forth with particularity facts showing that he comes within the statutory requirements. See 28 U.S.C. § 1915. However, the affidavit need not state the issues to be presented, and if the district court or the court of appeals has appointed counsel under the Criminal Justice Act of 1964, as amended, the party need not file an affidavit. See 18 U.S.C. § 3006A(d)(6). The motion shall also state whether or not leave to proceed *in forma pauperis* was sought in any court below and, if so, whether leave was granted.

.2. With the motion, and affidavit if required there shall be filed the appropriate substantive document—jurisdictional statement, petition for writ of certiorari, or motion for leave to file, as the case may be—which shall comply in every respect with the Rules governing the same,

except that it shall be sufficient to file a single copy thereof.

.3. All papers and documents presented under this Rule shall be clearly legible and should, whenever possible, comply with Rule 39. While making due allowance for any case presented under this Rule by a person appearing *pro se,* the Clerk will refuse to receive any document sought to be filed that does not comply with the substance of these Rules, or when it appears that the document is obviously and jurisdictionally out of time.

.4. When the papers required by paragraphs .1 and .2 of this Rule are presented to the Clerk, accompanied by proof of service as prescribed by Rule 28, he, without payment of any docket or other fees, will file them, and place the case on the docket.

.5. The appellee or respondent in a case *in forma pauperis* may respond in the same manner and within the same time as in any other case of the same nature, except that the filing of a single response, typewritten or otherwise duplicated, with proof of service as required by Rule 28, will suffice whenever petitioner or appellant has filed typewritten papers. The appellee or respondent, in such response or in a separate document filed earlier, may challenge the grounds for the motion to proceed *in forma pauperis.*

.6. Whenever the Court appoints a member of the Bar to serve as counsel for an indigent party in a case set for oral argument, the briefs prepared by such counsel, unless he requests otherwise, will be printed under the supervision of the Clerk. The Clerk also will reimburse

such counsel for necessary travel expenses to Washington, D.C., and return, in connection with the argument.

.7. Where this Court has granted certiorari or noted or postponed probable jurisdiction in a federal case involving the validity of a federal or state criminal judgment, and where the defendant in the original criminal proceeding is financially unable to obtain adequate representation or to meet the necessary expenses in this Court, the Court will appoint counsel who may be compensated, and whose necessary expenses may be repaid, to the extent provided by the Criminal Justice Act of 1964, as amended (18 U.S.C. § 3006A).

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* * *

Rule 49. Interest and damages

.1. Unless otherwise provided by law, if a judgment for money in a civil case is affrmed, whatever interest is allowed by law shall be payable from the date the judgment below was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the mandate shall contain instructions with respect to allowance of interest. Interest will be allowed at the same rate that similar judgments bear interest in the courts of the State where the judgment was entered or was directed to be entered.

.2. When an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages.

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* * *

§ 27A.901 State Bar of Michigan; body corporate; membership; right to practice law.] SEC. 901. The state bar of Michigan is a public body corporate, the membership of which consists of all persons who are now and hereafter licensed to practice law in this state. The members of the state bar of Michigan are officers of the courts of this state, and have the exclusive right to designate themselves as "attorneys and counselors," or "attorneys at law," or "lawyers." No person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto. (MCL § 600.901.)

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§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to

which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy. June 25, 1948, c. 646, 62 Stat. 928.